Questions and Answers on Economic Stimulus Proposal – Part 2

Question 22: To the extent that projects are dependent on permitting to go forward, what can be done from HQ to work with the resource agencies to expedite the permitting process?

Answer 22: HEP will meet with each of the resource agencies primarily involved in the project level permitting of highway projects, and discuss how they can help expedite the permit process for the potential economic stimulus package. We will pass on any advice to the Division offices based on our discussions with the resource agency personnel.

Question 23: Is there a problem with the definition of obligation for MPO activities?

Answer 23: Because there is no statutory definition for obligation as it relates to planning, the Divisions should work with the States to be as flexible as possible on this issue based on each MPO's Unified Planning Work Program.

Questions 24: What can be expected regarding DBE goal requirements for the Economic Recovery funds given the fact that some States have limited DBE/WBE firm capacity?

Answer 24: Many states would have concerns and/or difficulty with suddenly trying to ensure that the DBE community has the capacity to deliver percentages similar to the normal dollars. However, there will be some states and some representatives of the DBE community that would say that, even with capacity concerns, they still think they could deliver a greater sized program.

Several alternatives to consider:

- Have the same goals as for normal projects and accept good faith efforts;
- Set lower goals for Stimulus Projects given capacity concerns;
- Change the mix of race-conscious versus race-neutral goals to try to address the issue.

Given all this, the ultimate answer is that we need to wait to see the will of Congress on the subject.

Question 25: Can we assume by the answer to Question 12 in the first set of Qs and A that the Brooks Act, Simplified Acquisition and other requirements would be applied as they are currently?

Answer 25: Yes. That was our intent in the "... in a manner that complies with the Federal laws and FHWA regulations" and other portions of the original answer.

Question 26: How will FHWA view a design-build project as meeting the timing requirements? Will it be when an RFP is advertised?

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Answer 26: In design-build, some phases of construction (clearing, grubbing, earthwork, etc.) start shortly after the notice to proceed is issued. As design proceeds, construction also continues. Depending on the type of project, the availability of permits, the percent of design furnished in the RFP, and similar issues, there may not be a significant time period between the contract notice to proceed and the start of construction. The length of time for the abundance of jobs to materialize on a design-build project may not be as much of an issue as perceived during the videoconference. As with other methods of construction contracting, there will be some lag time during the procurement phase, i.e. advertising, assessing responses, and award. The lag time may be a bit longer with design-build. However, construction contract procurement using the design-build method should remain a viable option in delivering projects with the economic recovery or stimulus funding.

Question 27: If the Economic Recovery package extends over multiple years, how will multi-year projects that have construction components set to go in 2009 be treated? Would the recovery funds be eligible to substitute for the State funds (not just a cash strapped situation) – a.k.a. AC conversion – for the 2009 construction or later elements?

Answer 27: We believe that the intent of the bill will be to infuse extra funds into the transportation program (i.e. supplement not supplant existing transportation funding). While there may be a situation that we are missing here, it appears that what is described here would be a case of the funds supplanting existing transportation funding and should not be permitted.

Question 28: Beyond advancing pure construction projects what other types of projects or operational considerations should the States be considering?

Answer 28: The use of Operations concepts to mitigate impacts of the expanded program and inclusion of ITS or other operational elements in the projects are important considerations which should be made during the development of the program.

To the best of our ability we should make every effort to avoid degrading the safety and operations of the system and assure that the widest possible economic stimulus be achieved. Lastly, it should be remembered that many Operation elements require limited or no environmental review time, making them very attractive for quick deployment.

The Divisions should advance the concepts and tools of the Work Zone Mobility initiative, use of Traffic Incident Management techniques, and traveler information systems. These can significantly reduce the potential network congestion which might occur when a large number of projects are on the system at the same time. There is also an opportunity to include elements into the project or advance them as stand alone projects. Examples include traffic signal upgrades, weigh in motion equipment, Advanced Transportation Management Systems, and similar projects.

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The HQ Offices of Transportation Operations and Transportation Management are prepared to assist the Division offices in advancing these Operation elements.

Question 29: Will there be any implications from the Economic Stimulus Package on how indirect costs are allocated?

Answer 29: For those divisions whose State DOTs recover indirect costs via approved indirect cost allocation plans (ICAPs), we recommend you begin discussions with your State to identify and mitigate potential effects the proposed Economic Stimulus Package (ESP) may have on your indirect cost allocations. By regulation, 2 CFR 225 Attachment E points out the need to properly account for "extraordinary or distorting expenditures" (see paragraphs B and C of Attachment E) in order to ensure an equitable distribution of indirect costs to all benefiting cost objectives (federal and non-Federal awards/activities).

Not making allowances for the one-time infusion of significant amounts of Federal dollars into the FAHP will likely result in a significant over-recovery of indirect costs in FY 2009 that will have to be recovered at a later time.

Even if your State does not use an ICAP, the ESP may have an effect on local public agency (LPA) indirect cost recovery, and you may wish to also discuss this issue with your State for their consideration in reviewing, negotiating and approving rates of LPAs.

Question 30: Are there specific actions that States should be considering related to tracking these economic recovery/stimulus funded projects in case of audit?

Answer 30: In addition to the normal stewardship and oversight that is applied to the administration of projects, Division Offices and States should engage in discussions about the plan of actions each will take to pay special attention to the economic recovery/stimulus funds. We suggest that attention is given to tracking the use of funds on projects from start to finish, e.g. types of projects (with some detail regarding the description or scope of work), when various project activities (like advertising, award, notice to proceed, etc.) begin and/or end, how many people are employed during the various of phases where these funds are used, etc. For this administrative effort, details are suggested versus streamlining. There will probably be requests for many different cuts of information regarding use of the economic recovery/stimulus funds and benefits to the economy. In addition, the Division Offices and States should include the locally-administered projects in tracking the projects that use the economic recovery/stimulus funds.